

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDMOND DAWON NEVILLS,

Defendant-Appellant.

UNPUBLISHED

October 27, 2011

No. 297134

Berrien Circuit Court

LC No. 2009-003078-FH

Before: MARKEY, P.J., and SERVITTO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv). Defendant was sentenced to 2 to 40 years' imprisonment. Because defendant was not denied the effective assistance of counsel and sufficient evidence was present to support his conviction, we affirm.

After obtaining information from a police informant that someone named David was selling drugs at an apartment, police executed a search warrant at the apartment on July 2, 2009. Present at the apartment were David Sheperd, Henry Sheperd, and Tamara Jude, who resided there, and defendant, Ms. Jude's nephew. David and Henry Sheperd were in a back bedroom and Jude was on the living room couch. On the kitchen table police found one large rock of crack cocaine, four bags with smaller rocks of crack cocaine, a plate, doily, empty seals, a lighter, and a small metal tool. Three smaller bags of crack cocaine were also found on the floor of the kitchen. Defendant was found lying, fully clothed in an empty bathtub in the bathroom. Police retrieved 67 plastic seals of crack cocaine from the toilet, which could still be heard refilling from having recently been flushed. According to testimony at trial, defendant made several incriminating statements regarding the crack cocaine.

On appeal, defendant first contends that counsel was ineffective. Specifically, defendant argues that in failing to move to suppress the testimony of two witnesses, David Sheperd and Tamara Jude, who were subject to government intimidation, his trial counsel acted in a way that fell below the objective standards of reasonableness. We disagree.

Defendant acknowledges that he failed to move for a new trial on the basis of ineffective assistance of counsel and failed to request a *Ginther*¹ hearing. Thus, our review is limited to mistakes apparent on the record. *People v Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002).

To prevail on an ineffective assistance of counsel claim, a defendant must demonstrate that his attorney's conduct "fell below an objective standard of reasonableness," and that he was prejudiced as a result. *Strickland v Washington*, 466 US 668, 688-692; 104 S Ct 2052; 80 L Ed 2d 674 (1984); see also *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007). The prejudice requirement is satisfied when the defendant demonstrates "a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different." *People v Moorner*, 262 Mich App 64, 76; 683 NW2d 736 (2004). Effective assistance of counsel is presumed, and defendant is required to overcome a strong presumption that sound trial strategy motivated defense counsel's conduct. *People v LeBlanc*, 465 Mich 575, 578; 640 NW2d 246 (2002).

Our review of the record shows that the conduct of defendant's counsel did not fall below an objective standard of reasonableness. A number of different prosecutorial and judicial actions aimed at preventing a witness from testifying may violate a defendant's due process rights. See *Webb v Texas*, 409 US 95; 93 S Ct 351; 34 L Ed 2d 330 (1972), (judge strictly warned witness, advising him that if he lied the judge would personally assure an indictment for perjury); *United States v Thomas*, 488 F2d 334, 335 (CA 6, 1973) (secret service agent threatened witness with indictment for misprision of a felony prior to testimony being given). However, in the present case there is no evidence in the record to suggest that either Sheperd or Jude was subject to government intimidation resulting in substantial interference with their testimony. See *United States v Pierce*, 62 F3d 818, 833 (CA 6, 1995). Moreover, defendant has not offered affidavits from either Sheperd or Jude alleging intimidation of any kind, nor has he presented other evidence suggesting such intimidation occurred.

Trial counsel is not required to raise meritless objections. *People v Rodriguez*, 212 Mich App 351, 356; 538 NW2d 42 (1995). Accordingly, counsel's failure to move to suppress the testimony was not objectively unreasonable.

Defendant next contends that the prosecution failed to present sufficient evidence at trial to warrant a conviction. Specifically, defendant argues that the prosecution failed to prove that he had possession of the narcotics in question. We disagree.

In evaluating a defendant's claim regarding the sufficiency of evidence upon which he or she was convicted, the court must review the evidence in a light most favorable to the prosecution in determining whether any rational trier of fact could find that all the essential elements were proven beyond a reasonable doubt. *People v Robinson*, 475 Mich 1, 5; 715

¹ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

NW2d 44 (2006). Furthermore, all conflicts of evidence should be resolved in favor of the prosecution. *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005).

A significant amount of evidence was presented to establish that defendant was in possession of the drugs recovered by officers. Testimony at trial established that 67 “seals” of crack cocaine were recovered in and around the toilet of the bathroom in which the defendant was found and five rocks of crack cocaine were found on the kitchen table among drug packaging materials and defendant’s cell phone. Three smaller bags of crack cocaine were also found on the floor between the kitchen and the bathroom. In addition to this evidence, officers testified that defendant made statements about the value of the crack cocaine found in the toilet and about the presence of drug residue on his fingers. Further, one officer testified to hearing a statement by defendant that everything on the kitchen table belonged to him. Finally, the prosecution presented testimony of the residents of the apartment disclaiming ownership of the narcotics or knowledge of how they came to be at the apartment. This evidence, taken together, is sufficient to establish defendant was in possession of the drugs. Reviewing evidence in a light most favorable to the prosecution, *People v Robinson*, 475 Mich at 5, and resolving all conflicts of evidence in their favor, *People v Williams*, 268 Mich App at 419, we thus find that sufficient evidence was presented at trial to support a conviction for possession of a controlled substance with intent to deliver less than 50 grams.

Affirmed.

/s/ Jane E. Markey
/s/ Deborah A. Servitto
/s/ Amy Ronayne Krause